

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

SHAWN THOMAS MOORE,
Plaintiff

v.

BRIAN COVERT, Warden;
JASON HILTON, Asst. Warden;
BRIAN LUFFEY, PrimeCare Administrator;
DR. ROSSINO, PrimeCare Doctor;
PRIMECARE MEDICAL INC.,
Defendants

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NO. 2:14-cv-00870-MPK

CIVIL ACTION – LAW

Magistrate Judge Maureen P. Kelly

ELECTRONICALLY FILED

JURY TRIAL DEMANDED

**MOTION OF DEFENDANTS BRIAN LUFFEY AND
PRIMECARE MEDICAL, INC. TO PLAINTIFF'S AMENDED COMPLAINT**

AND NOW, come Defendants Brian Luffey and PrimeCare Medical, Inc. (hereinafter "PrimeCare"), by and through their counsel, Johnson, Duffie, Stewart & Weidner, P.C., who file this Motion to Dismiss by respectfully stating the following:

1. This is a pro se prisoner lawsuit which was commenced in the Court of Common Pleas of Lawrence County by the filing of a Complaint on May 7, 2014.
2. Plaintiff filed an Amended Complaint in the Court of Common Pleas of Lawrence County on June 11, 2014, to which this Motion to Dismiss is being filed.
3. Plaintiff claims a violation of his constitutional rights and as such this matter was removed to this Court.
4. Plaintiff claims that has had been afflicted with Hepatitis C (subtype 1-A) since 1996.

5. Plaintiff alleges that he is not being provided “proper treatment” for his condition.

6. Plaintiff’s Amended Complaint reflects that he was examined by a physician (Dr. Rossino) on multiple occasions; he has had blood work done on multiple occasions; and he has received diagnostic testing including a sonogram and an x-ray.

7. Plaintiff also attached a response to a grievance (Exhibit C) to his Amended Complaint. This response indicates that Plaintiff is not a candidate for additional treatment for his condition, because he has not had persistent ALT levels, nor has he had high levels of HCV RNA in his blood.

8. The only allegations as to Mr. Luffey are that he responded to Plaintiff’s grievance. There are also no allegations concerning policies and procedures in the Amended Complaint.

9. Plaintiff’s alleged legal claim is that the Moving Defendants violated his 14th Amendment rights of the United States Constitution afforded to him as a pretrial detainee.

10. Plaintiff’s Amended Complaint fails to demonstrate a deliberate indifference to a serious medical condition. Moreover, Plaintiff’s Amended Complaint fails to demonstrate any deficiencies in policies or procedures of PrimeCare.

11. Plaintiff’s Amended Complaint fails to demonstrate a viable cause of action.

WHEREFORE, Defendants Brian Luffey and PrimeCare Medical, Inc. respectfully request that this Honorable Court grant their Motion to Dismiss and that Plaintiff's Amended Complaint be dismissed with prejudice.

Respectfully submitted,

JOHNSON, DUFFIE, STEWART & WEIDNER

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Date: July 3, 2014

CERTIFICATE OF SERVICE

I hereby certify on the 3rd day of July, 2014, that the foregoing *Motion to Dismiss Plaintiff's Amended Complaint* was electronically filed with the Clerk of Court using the CM/ECF system. I further certify that a copy of the foregoing document has been served on the following by depositing the same in the United States Mail, postage prepaid, in Lemoyne, Pennsylvania on July 3, 2014:

Shawn Thomas Moore
**SPECIAL MAIL - OPEN ONLY IN
PRESENCE OF THE INMATE**
Lawrence County Jail
111 S. Milton Street
New Castle, PA 16101

Terry C. Cavanaugh, Esquire
Marshall, Dennehey, Warner, Coleman & Goggin, P.C.
U.S. Steel Tower
600 Grant Street, Suite 2900
Pittsburgh, PA 15219
Counsel for Susen Rossino, M.D.

JOHNSON, DUFFIE, STEWART & WEIDNER

By: s/John R. Ninosky
John R. Ninosky